IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS NO. 5689, 5690 & 11185 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PATEL HINABEN JASWANTBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR. PS PATEL for the petitioners.
MR. KAMAL TRIVEDI, ADDL. ADVOCATE GENERAL
WITH MS. SANGITA VIESHEN, AGP for the
respondent State
MR. A.D. OZA, FOR respondent Board.

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CORAM : HON'BLE MR.JUSTICE KUNDAN SINGH

Date of decision: 12/12/2003

ORAL JUDGEMENT

1. In these petitions common question is involved for determination and hence these petitions are being disposed of by common judgment.

2. The petitioners are students who after passing Secondary School Certificate Examination got their admissions in different districts in Standard XI for the purpose of Higher Secondary Certificate Examinations in any one of are General, Science and Vocational Streams. It is stated that after passing Standard X a student has to select one of the streams (groups) and he has to study for two years in one stream for Higher Secondary Certificate Examination conducted by the respondent Board.

3. In these petitions, the students either had adopted one stream in Standard XI and another stream in Standard XII i.e. the students have opted general stream in Standard XI and Standard XII and having passed Higher Secondary Certificate Examination in General Stream they got admission again in Standard XII for vocational stream and passed H.S.C. Examination in vocational stream in the next year. In second type of cases, the students have adopted general stream in first year ( Standard XI) and they have adopted vocational stream in second year ( Standard XII). They have also passed Standard XII in vocational stream. In third type of cases in these group of petitions, the students have adopted vocational stream in Standard XI. After passing that stream in Standard XI, they adopted general stream in Standard XII. Thereafter, they adopted vocational stream in the next year and passed H.S.C. Examination in vocational stream and they were given admissions to P.T.C. and C.P. Ed.

4. Heard the learned counsel Mr. Y.N Oza Sr. Counsel and other counsel for the petitioners and Mr. Kamal Trivedi, learned Additional Advocate General for the respondent State and Mr. Arun Oza, learned Counsel for the respondent Board at length and perused relevant material on record.

5. This is a second round litigations. Those who have passed the vocation stream in Standard XII and they have also passed general stream in Standard XI or they passed Standard XII in General Stream and passed Standard XII in vocation stream in next year. In short, in all these petitions, the petitioners have changed their stream and they were admitted in vocational course and

they were given show cause notice as to why the certificate and mark-sheets issued to them for having passed Standard XII should not be cancelled as they were issued in violation Regulation 19 (2), 19 (kh) (1) and 40 (4) of 1977. Thereafter, the certificates and marksheets issued for having passed Standard XII have been cancelled by the impugned orders. As such, the students have filed these petitions against the impugned orders dated 13-2-2002 passed by the concerned authority of the respondents. In all these petitions, the question involved is regarding change of stream either in Second year i.e. Standard XII or after having passed H.S.C. Examination in General Stream they passed again H.S.C.Examination in vocational stream in next year. It is also contended that the show cause notice does not contain any ground for cancellation of higher secondary certification examination. No opportunity of being heard was afforded to meet with the grounds. The impugned orders are on other grounds while the show cause notices were issued on different grounds. Hence, principles of natural justice have been violated. The relevant provisions of Regulations 19 (2) or 19 (b) (1) or any other provisions regarding change of stream in Standard XII are not violated at all. As such the impugned orders are totally beyond jurisdiction.

6. Mr. K.B. Pujara learned counsel for the petitioners has contended that after having passed Standard XII in general stream the students have passed vocational stream in Standard XII, and they have passed H.S.C. Examination and they were selected and admitted for vocational course under centralised admission system. Once the student is permitted to appear in Standard XII after changing the stream, passed the examination of Standard XII, such permission cannot be cancelled by any authority. The impugned orders have been passed without application of mind. Once permission is granted and the student appeared in the examination the authority has no power or authority of law to cancel candidature of the student and the authority concerned will be estopped to say that the admission was given wrongly even some mistake has been committed by the official concerned. The students having been passed in Standard XII in vocational stream, various students were given admission in vocational course to C.P. Ed. and P.T.C. First Term expired on 31-10-2002 and second term expired on 15-11-2003. The Government of Gujarat made amendment vide Circular dated 12-9-2001 whereby Regulation 12 (2A) (5), 20 (3) and 20 (3A) have been and amended regulations read as under.

i. Revised Regulation 19 (2K) (5) : No private candidate can apply for science stream, vocational stream and higher Uttarbuniyadi stream of higher secondary certificate examination.

ii. Revised Regulation 20 (3) : The candidate who has passed once in one stream of higher secondary certificate examination, cannot appear again in the same stream or after changing the same stream in another stream of higher secondary certificate examination

iii. Revised Regulation 20 (3kh) if any candidate would like to appear as an external candidate in higher secondary certificate examination then he can appear in one stream and maximum two subjects approved by the Board accepting the subjects in which he has passed earlier. Certificate and mark-sheet for he marks obtained in the examination in external subject/subjects will be issued to such candidate for the subject/subjects in which he appeared (percentage and grade is not to be shown in the mark sheet.)

7. Learned counsel for the petitioners also contended that Regulation 19 (b) provides that in a case where it is found that the candidate admitted to the examination under Regulation 19 (A) has been adversely affected by error, malpractice or fraud or improper conduct or where their admission to top standard is found to be irregular in the examination, it shall have power to cancel candidate's admission to the examination notwithstanding to exclusion of the name of the candidates in the list of the candidates registered for the examination and/or the candidates' actual appearance in the examination in one or more subjects. On the basis of the provisions of Regulation 19 (b), the contention of the learned counsel for the petitioners is that there is no error, malpractice, fraud or improper conduct committed in the examination of the petitioners nor examination was irregular and hence the impugned orders for cancellation of the admission to the examination is without application of mind and is not sustainable in the eye of law. No notice has been issued in respect of error, malpractice, fraud, improper conduct or

irregularity of the petitioners in the examination. It is also pointed by the learned counsel for the petitioners that from provisions of Regulation 20 that change of stream or subject is permissible under Regulation 20 (3). According to the provisions of Regulation 20 (3) the candidate who has passed higher secondary certificate examination of the Board shall be eligible to reappear in subsequent examination either in part or for all the papers required for the higher secondary certificate examination. If he has submitted a fresh application in the prescribed form and pays fresh fees through the head of the school last attended by him, provided he elects subject in which he has not previously passed or having obtained emption marks. It is further provided that when he surrendered the mark sheets and certificate of SSC examination previously issued on temporary basis shall be granted a certificate unless he has passed at the next attempt for admissions one subject in which he had not passed at the previous examination.

8. Learned counsel for the petitioners also contended that the standard for obtaining higher secondary certificate examination has been provided under Regulation 28, which provides to qualifying for higher secondary certificate examination. The candidate must pass at one and the same or in accordance with the provision of Regulation 31 for grant of exemption in each of different groups selected Appendix-A.

9. Learned counsel for the petitioners relied on the following decisions :

i. In the case of Maharshi Dayanand University Vs. M.L.R. Saraswati College of Education, reported in 2000 (7) SCC 746, wherein it is held as under :

> "34 - In the normal course, the answer could only be that the results cannot be allowed to be released. But there are, in our opinion, two circumstances which cannot, however, be disregarded. One is that there was an order of the NCTE - though, as stated above, NCTE was not right in giving permission - permitting additional students. Unfortunately, the NCTE is not a party before us and therefore we are not able to set aside its orders. Secondly, these extra 80 students have completed the two-year course, and paid the examination fee. The University which is the appellant before us has accepted the fee from these students and allowed them to take the examination. Question is

whether, in such circumstances, we should permit the University not to release the results.

35 - Though this Court has, almost uniformly been refusing to show any concession in favour of the students or the institutions, we have felt in the peculiar facts of the case and in view of the circumstances mentioned above, the results could be directed to be released."

ii. In the case of Shri Krishan Vs. The Kurukshetra University, reported in AIR 1976 SC 376, wherein it is held as under :

"6 - ..... The last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lecturers. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant was worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear. It was, however, submitted by Mr. Nandy learned counsel for the respondent that the names of the candidates who were short of percentage were displayed on the Notice Board of the College and the applicant was fully aware of the same and yet he did not draw the attention of the University authorities when he applied for admission to appear in LL. B. Part II Examination. Thus the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court.

7 - .... If neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestio falsi, or suppression veri. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures.

There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant."

iii. In the case of A. Sudha V. University of Mysore and another, reported in AIR 1987 SC 2305, wherein it has been held as under :

"18 - The facts of the instant case are, more or less, similar to the Rajendra Prasad Mathur's case (supra) (AIR 1986 SC 1448). It has been already noticed that on the appellant's query, the Principal of the Institute by his letter dated February 26, 1986 informed her that she was eligible for admission in the First Year MBBS Course. It was, inter alia, stated in the letter that the candidate should have obtained 50% marks in the optional subjects in the B.Sc. Examination. There is no dispute that the appellant had obtained 54% marks in those subjects in the B.Sc. Examination. The appellant, was, therefore, quite innocent and she was quite justified in relying upon the information supplied to her by none else than the Principal of the Institute in the said letter in regard to the eligibility of the admission in the First Year MBBS Course. In the circumstances, we do not think that we shall be justified in penalising the appellant by not allowing her to continue her studies in the MBBS Course. Prima facie it was the fault of the Principal of the Institute but, in our view, the statement that was made by him in his said letter to the appellant as to the eligibility of the appellant for admission in the MBBS Course, as on a bona fide interpretation of the regulations framed by the Mysore University for admission to MBBS Course for the academic year 1985-86, which to some extent suffer from ambiguity. The regulations should have been more clear and specific. Be that as it may, following the decision of this Court in Rajendra Prasad Mathur's case (supra) while we dismiss the appeal, we direct that the appellant shall be allowed to prosecute her studies in the MBBS

Course, and that her result for the First Year MBBS Examination be declared within two weeks from date."

iv. In the case of Sanatan Gauda Vs. Berhampur University and others, reported in AIR 1990 SC 1075, wherein it has been held as under :

"The candidate was admitted to Law course by the Law College. The University has also permitted him to appear in pre-law and intermediate examinations. He was admitted to final year law course. But the result of the examination by the University was withheld on the ground of ineligibility to be admitted to law course. The authority is barred by estoppel.

v. In the case of Rajendra Prasad Mathur V. Karnataka University, reported in AIR 1986 SC 1448, wherein it has been held as under :

"Candidate was admitted in certain Engineering College. Admission in some cases made for capitation fee. The student pursued the study for about one year under the order of the High Court and Supreme Court. The college who gave admissions was responsible. The students were allowed to continue their studies."

vi. In the decision reported in 1992 Allahabad 122, wherein it is held that the due to mistake any candidate has been admitted and pursued the studies, the university authorities would be barred by principle of estoppel for cancelling the result of the students.

10. On the other hand, learned Additional Advocate General Mr. Kamal Trivedi for the respondent State and Mr. A.D. Oza, for the respondent Board submitted that the scheme of the Higher Secondary Certificate Examination is 10+ 2. Meaning thereby that after passing secondary certificate examination the candidate is required to opt the subjects mentioned in the group (stream) appended to the Higher Secondary Certificate Examination Regulation, 1977, the candidate cannot be permitted to change the stream after passing Standard XI in one stream. Provision of Regulation 20 (3) provides for eligibility to appear at the subsequent examination in part or for all the subjects, provided he selects the subjects in which he has not previously passed or having passed has not obtained exemption marks. Standard for obtaining admission to higher secondary certificate

examination has been provided under Regulation 20 for the eligibility for the higher secondary certificate examination, the candidate must have passed at one or the same examination or in accordance with the provisions of Regulation 31 for exemption in the subjects in each of different group selected from the Appendix.

11. The contention of the learned Additional Advocate General is that the candidate is required to pass at one or same subjects in each of the different groups. Meaning thereby is that the candidate is required to pass in the subjects of each of the different groups mentioned in Appendix - A. In subsequent examination he cannot take different subjects from different groups. He is required to have subjects of the same group and not different group. It also provides that the candidate himself will be responsible and the head of the school is required to see that the candidate selects entries in his application for admission to the examination. Such subjects are required to be cleared for the higher secondary certificate examination as per this Regulation and the scheme of the exemption as framed from time to time and the Board will not be in any way responsible for any adverse consequence arising from any mistake or omission made by the candidate or by the head of the institution. Meaning thereby is that the candidate or head of the institution shall be responsible for any mistake committed by the candidate for qualifying eligibility of the higher secondary certificate examination. It is also contended that the amendment in Rule is nothing but is only clarification of the earlier provisions of the Regulations. In that respect, learned counsel for the respondents has relied on the decision of this Court in the case of Torrent Laboratories Pvt. Ltd. V. U.O.I., reported in 1991 (55) E.L.T. 25 (Guj.) 25, wherein it has been held as under :

> "The Legislature simply made detailed and precissed provision with regard to the period of limitation and the show cause notice to be issued and for affording an opportunity of being heard to the assessee in certain cases. The provisions with regard to the limitation and the provisions with regard to affording an opportunity of being heard were required to be read into above Rule. Thus, that which was implicit in the Rule has been made explicit with little more precision. The courts would be slow to put construction on the provision of the statute which would otherwise defeat legislative purpose.

12. Thus, the contention of the learned Additional Advocate General for he respondent State and Mr. Arun Oza learned counsel for the respondent Board is that change of stream amounts to incomplete study and training. The experts on the education side provided certain grounds for study for the eligibility to that effect for higher secondary certificate examination that if any student passes Standard XI with one stream and passes Standard XII with another stream then study and training of the student would be incomplete and he would not be eligible for the higher secondary certificate examination. Learned Additional Advocate General for the respondent State and learned counsel for the respondent Board have relied on the decision of this Court by delivered by this Court (Coram : Hon'ble Mr. Justice A.R. Dave) in Special Civil Application No. 3233 of 2003 and other group of matters which has been confirmed by the Division Bench in Letters Patent Appeals, wherein it has been held as under :

"26 - It is not in dispute that according to the scheme of Higher Secondary Certificate Examination, a student has to study for 2 years in a particular stream. Unless a student has undergone 2 years studies in a particular stream and has passed the examination, he cannot be awarded the certificate of passing HSC examination. If a student has been given training and education for one year in one particular stream and thereafter, for the rest of the period, he is imparted education and training in a different stream, it cannot be said that the student has undergone training in a one particular stream because in such a case his training is incomplete. If a student studies in general stream in Std. XI and thereafter he studies in Std. XII in science stream, he cannot expect the Board to certify that the student had passed Higher Secondary Certificate Examination in science stream because the student did not study certain subjects of science stream which he was supposed to study in Std. XI. His training would be incomplete in that event and therefore the Board cannot be asked to certify the student as a student of science stream. One should not forget the fact that function of the Board is not to give certificate but is to see that the students are given proper training and education. If without giving proper training or imparting

proper education to the student, the student is given a certificate showing that he has passed HSC Examination, the entire object, with which the system works, would be frustrated.

27 - In my opinion, it would be in the interest of the students also to permit them to prosecute their studies in different streams because in such a case the students will not have proficiency in any of the streams. In educational matters, normally this court would not like to interfere like the Board. The Board is a body of experts and academicians who know how and what to be taught to a student in a particular stream. If the training imparted to the student is not complete, the studies may not help the students upon completion of the studies and there are all chances that such a student may not get admission in another institution for higher studies and his incomplete studies may hamper his progress in future."

13. The learned Additional Advocate General for the respondent State and learned counsel for the respondent Board has also relied on the decision of the Supreme Court in the case of C.B.S. E and another V. P. Sunilkumar and others, reported in 1998 (5) SCC 377.

14. In rejoinder, it is contended by the learned counsel for the petitioners that the learned Single Judge has not considered at all the relevant provisions of Regulations wherein change of stream is permitted. Learned Single Judge has also not considered the provisions of new amendment made in the relevant Regulations though they are available at the relevant time. The effect of new amendment has also not been considered particularly new amendment amendment has no retrospective effect. Had it been so, the outcome of the petitions would have been different. It is also submitted that all the authorities and decisions cited by the learned Additional Advocate General for the respondents and learned counsel for the respondent Board relates to fraud committed by the students. While in the present case there is no fraud committed by the petitioners. On the other hand, the Statute permits the student to appear in the subsequent examination in one or all the subjects. The amendment in Regulation came into force on 12-9-2001 with prospective effect and not with retrospective effect. The relevant provisions of Regulation 20 (3) have not been considered by the learned Single Judge. The statute by the amendment cannot

operate retrospectively. The learned Addl. Advocate General contended that in the Division Bench case, the mark sheets were held invalid and no admission could have been given on that basis. The students had not passed Standard XI of the same stream in which he has passed Standard XII. Even the Division Bench passed the order but considered the mark sheets as invalid and considered the student - petitioner for P.T.C. course. Merely the mark-sheets were cancelled later on will not change the fact situation. The grounds for not giving admission to P.T.C. course and grounds for cancellation of the mark sheets are considered. Hence, the judgment of the Division Bench is final. Misc.Civil Application was filed but it was withdrawn, as such the matter in dispute cannot be again agitated.

15. It is also contended that the learned Single Judge has not considered Regulation 19 (2) and 19 (b) as the petitions are in respect of breach of Regulation 19 (2) and 19 (b). The aforesaid judgment of the Hon'ble Single Judge of this Court is not applicable in the facts and circumstances of the present case.

16. I have considered carefully the contentions raised by the learned counsel for the parties. According to the learned Additional Advocate General and learned counsel for the respondent Board the student must have passed Standard XI as well as Standard XII in the same stream and in case the student has not passed the same stream then the student is not eligible to appear in higher secondary certificate examination.

17. In Special Civil Application No. 2474 of 2002 filed by Patel Jasminben Jayantilal Patel, she has passed Standard XI in vocational stream in the year 1998. Thereafter, she changed general stream and passed Standard XII in 1999 in general stream. Thereafter, she again passed Standard XII in vocational stream in 2001. In Special Civil Application No. 5689 of 2002 filed by Patel Hinaben Jashwantbhai, she has passed Standard XI in vocational stream in 1999. Thereafter, she passed Standard XII in general stream in 2000. Again she passed Standard XII in vocational stream in 2001. Similarly, in Special Civil Application No .5690 of 2002, petitioner Mrudulaben Patel passed Standard XI in vocation stream in 1999 and thereafter in 2000 she passed Standard XII in general stream and then she again appeared in Standard XII and passed general stream in 2001. In the same way, in Special Civil Application No.11185 of 2002, Nikitaben passed Standard XI in 1999 in vocational stream. She change stream in 2000 and passed Standard and then she

again passed Standard XII in vocational stream. Though this petition was not listed along with the group of the identical petitions the learned counsel for the petitioner had already pointed out the relevant facts regarding petitioner Nikitaben of Special Civil Application No. 11185 of 2002 that she has passed Standard XI XI as well as Standard XII in vocational stream. Hence, the said petition was listed again but nobody appeared to say anything more. I have tried to find relevant material from the record in support of the contentions raised by the learned counsel for the petitioners regarding passing of the petitioners vocational stream in Standard XI and Standard XII. But I could not get sufficient material in this respect. As the petitioners of these petitions have passed Standard XI and Standard XII in vocational stream, they are entitled to have certificate of higher secondary certificate examination.

18. The main question in these petitions is that whether the petitioners have passed Standard XI and Standard XII in vocational stream as per the scheme of higher secondary certificate examination. In these petitions as stated by the learned counsel for the petitioners, the petitioners have passed Standard XI in one year and Standard XII in voctional in the subsequent examination after having passed H.S.C. Examination in General Stream. Under these circumstances, it would be in the interest of justice, if the authority concerned is directed to reconsider in the light of the contentions raised by the learned counsel for the parties and pass appropriate order regarding cancellation of the certificate and mark sheets of Standard XII issued by the respondent Board. In case, the contentions of the learned counsel for the parties are found true and genuine, then the appropriate orders will be passed by the concerned authorities of the respondents for withdrawal or cancellation of the impugned orders.

19. Accordingly, these petitions are being disposed of with a direction to the respondents Board to reconsider the claim of the petitioners on the basis of the relevant record and if permissible under the law and Regulations the concerned authorities of the respondents shall pass appropriate orders in accordance with law and Regulations. In case, the respondents find claim of the petitions to be genuine and proper and they are eligible to have mark sheets and certificate of higher secondary certificate examination, under the Regulations, impugned orders for cancellation of the certificate and mark sheets issued to the petitioners by the respondent Board

will stand quashed and set aside. Rule is discharged, with no order as to costs.

(Kundan Singh, J.)

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